

Since no claims are amended, added or canceled by this Response, the claims of this application as they presently stand are not reproduced herein. Claims 1-35 were present in this application as originally filed. As a result of Applicants' election, with traverse, in response to the Examiner's Requirement for Restriction, the Examiner previously withdrew Claims 13-35 from further consideration. In response to the Response filed on 28 June 2004 in this Application, the Examiner has agreed with Applicants' assertion that Claim 13 should be included among the elected claims, but otherwise has made his Requirement for Restriction final in response to Applicants traversal thereof. Accordingly, Claims 14-35 presently stand withdrawn from further consideration pending the allowance of a generic claim, and the claims currently under active prosecution in this application are Claims 1-13.

In the currently outstanding Official Action, the Examiner has:

1. Again acknowledged Applicants' claim for foreign priority under 35 USC 119 (a) – (d) or (f), and confirmed the receipt by the United States Patent and Trademark Office of the required certified copies of the priority document therefor;
2. Indicated that the drawings filed with this application on 2 April 2001 have been accepted;

3. Provided Applicants with a copy of the Form PTO-1449 filed with their Information Disclosure Statement of 31 July 2001 duly signed, dated and initialed by the Examiner, but nevertheless indicated that the document accompanying that Information Disclosure Statement has been lost and requested Applicants to provide a duplicate copy; indicated that Applicants Information Disclosure Statement of 13 June 2003 has been lost and requested Applicants to provide a duplicate copy; and unfortunately still failed to initial the entry concerning U.S. Patent No. 5,696,757 (document AA) on the Form PTO-1449 that accompanied Applicants' Information Disclosure Statement of 23 November 2003 – **Duplicate copies of Applicants' Information Disclosure Statements of 31 July 2001 and 13 June 2003 (including cited references) are enclosed herewith, and Applicants again request that the Examiner provide them with a copy of a fully signed, dated and initialed copy of the Form PTO-1449 that accompanied their Information Disclosure Statement of 25 November 2003;**
4. Provided Applicants with a copy of a Form PTO-892 listing certain documents deemed to be pertinent to Applicants' disclosure, but not applied against any of the claims of this Application;
5. Acknowledged Applicants' submission of a verified English language translation of the priority document for this Application;
6. Rejected Claims 1-3 and 6-13 under 35 USC 102(b) as being anticipated by Applicants' Admitted Prior Art as shown in Figs. 6-8B and 11A-13D; and

7. Indicated that Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of their respective base claims and any intervening claims.

Further comment on items 1-5 and 7 above is not deemed to be necessary in this Response.

With respect to item 6, the Examiner's substantive rejection of Claims 1-3 and 6-13 as being anticipated by Applicants' Admitted Prior Art as shown in Figs. 6-8B and 11A-13D of the present specification, Applicants respectfully **traverse** the Examiner's rejection.

The basis of this traversal is that Applicant respectfully submits that the Examiner has failed to correctly understand the disclosure represented by Figs. 6-8B and 11A-13D of the present application as it applies to the presently claimed invention.

In particular, it appears to Applicants that the Examiner has interpreted Claim 1 of this application in such a manner that the first region having the first information stored in the depth direction corresponds to the lead-in region of the admitted prior art (see Figs. 13A-13D), while the second region having the second information recorded in the plane direction corresponds to the user region of the admitted prior art (see Figs. 13 A-13D). In this regard, Applicants respectfully note that there are in fact two kinds of regions shown in the example of Fig. 13 that have different depths, i.e., the mark string 56 and the pit string 53 in the lead-in region disclosed. It is to be noted in this regard, however, that no information is recorded by the differences in depth between the disclosed mark string 56 and the pit string 53 that have information recorded by respectively difference recording schemes from that of the present invention.

More specifically, each mark 55 of the mark string 56 is provided such that the reflectance of light differs between the mark portion 55 and the non-mark portion 58 in the recording layer 57. On the other hand, each pit 52 of the pit string 53 is formed as a hole with a constant depth (see present specification at page 5, lines 27-32). In other words, information in the so-called admitted prior art is recorded depending upon the difference in reflectance of light in the mark string 56, while information is recorded in the pit string 53 based upon the presence/absence, the length and the like of the pits that each have the same constant depth. No information is recorded in the so-called admitted prior art by virtue of the possible presence of accidentally different depths of the mark string 56 and the pit string 53 shown in Fig. 13B.

The present invention, on the other hand, intends to record more information in the depth direction by providing pits of different depths 2a, 2b as shown in the embodiment of Fig. 1B *within the pit string itself*. Hence, Applicants respectfully submit that it is clear that the claim wording concerning the *information recorded in the depth direction* must be interpreted in view of the clear differences between the so-called admitted prior art and the presently claimed invention discussed hereinabove. In other words, the fact that the mark string 56 is located in a depression having a different depth than that of the constant depth of the pits of the pit string 53 in the so-called admitted prior art does not constitute a teaching, disclosure or suggestion to one of ordinary skill in the art of the recording of information based upon differences in the depth of depressions (i.e., pits) *in addition to* the recording of information based upon the difference in reflectivity between mark and no mark areas and/or the presence/absence, length or the like of pits.

In view of the foregoing, Applicants respectfully submit that the Examiner has read disclosure into the so-called admitted prior art that is not really present therein using a hindsight approach improperly based upon the remainder of the Applicants' disclosure, and that consequently, the Examiner's currently outstanding rejection is not supported by the present record and all of the claims in the present application are presently in condition for allowance. Accordingly, a decision withdrawing the currently outstanding rejection of Claims 1-3 and 6-12, and allowing Claims 1-13 in response to this communication is respectfully requested.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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